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KY REGISTRY (C)
LECTION FINAN

May 17, 2006

By Facsimile and U.S. Mail

Connie L. Verrill
General Counsel
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, KY 40601

Re: Advisory Opinion Request

Dear Ms. Verrill:

I am writing on behalf of the Partnership for Commonsense Justice, Inc. ("PCJ"). The PCJ respectfully requests an advisory opinion pursuant to KRS 121.135 concerning the application of KRS Chapter 121 to the PCJ's proposed activities.

Background

The PCJ is a non-profit corporation organized under Section 501(c)(4) of the Internal Revenue Code. The PCJ's purposes are to promote social welfare and educate the public concerning the Kentucky judiciary. The PCJ intends to engage in mass media communications during the fall election cycle that may clearly identify candidates for the offices of Supreme Court Justice, Court of Appeals Judge, Circuit Court Judge, or District Court Judge. None of these communications will include words clearly constituting "express advocacy," such as "vote for," "elect," "vote against," or "defeat." The PCJ has no plans to coordinate their communications with any candidate for office or their campaign committees, but the PCJ may coordinate with permanent committees and other entities.

As noted above, the PCJ does not intend to engage in "express advocacy." However, the PCJ would like to note in communications which candidates have beliefs or values in apparent agreement with the beliefs and values held by PCJ members. These communications would not include words such as "vote for," "elect," "vote against," or "defeat." The PCJ is concerned, based on prior determinations by the Registry, that such communications would constitute "express advocacy."

Questions Presented

1. Based on the above facts, and assuming that the PCJ does not engage in “express advocacy,” would any conduct proposed by the PCJ be prohibited by the ban in KRS 121.035 on the use of corporate funds “for the purpose of aiding, assisting or advancing any candidate,” or any other ban in KRS Chapter 121 on the use of corporate funds in Kentucky elections?

2. Based on the above facts, and assuming that the PCJ does not engage in “express advocacy,” would any conduct proposed by the PCJ subject it to regulation as a “permanent committee” as that term is defined in KRS Chapter 121?

3. Based on the above facts, and assuming that the PCJ does not engage in “express advocacy,” would the proposed communications by the PCJ constitute “independent expenditures” as that term is defined in KRS Chapter 121?

4. Based on the above facts, and assuming that the PCJ does not engage in “express advocacy,” would any conduct proposed by the PCJ subject it to regulation under Kentucky’s disclaimer statute, KRS 121.190?

5. Do the Registry Staff Report in *Sandy Jones v. Alan Baker, Thomas Baker and Citizens for Honest Government*, Case No. 2004-207 (Adopted by Board Order dated August 26, 2005) and Registry Advisory Opinion 2006-001 represent the Registry’s current interpretation of the meaning of the phrase “express advocacy”?

6. Based on the above facts, would a mass media communication indicating that a judicial candidate has beliefs or values in apparent agreement with the beliefs and values held by PCJ members but which does not include any words such as “vote for,” “elect,” “vote against,” or “defeat” constitute “express advocacy” such that the communications would be regulated by the Registry and KRS Chapter 121?

7. Based on the above facts, would a communication from either the PCJ to its members or a trade association member of the PCJ to its members indicating either that (1) a judicial candidate has beliefs or values in apparent agreement with the beliefs and values held by PCJ members but which does not include any words such as “vote for,” “elect,” “vote against,” or “defeat” or (2) that the judicial candidate has been endorsed by the PCJ be regulated by the Registry and KRS Chapter 121?

8. Is it permissible under KRS Chapter 121 for a permanent committee regulated by the Registry to make contributions to the PCJ?

9. Is it permissible for the PCJ to coordinate its activities with permanent committees or any other entity?

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Thank you for your consideration of this request. If you need additional information or clarification, please contact me.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Amy D. Cabbage", with a stylized flourish extending to the right.

Amy D. Cabbage